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Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-10
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O 122206Z JUN 78
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TO SECSTATE WASHDC IMMEDIATE 7689
INFO AMCONSUL MONTREAL
ALL OTHER CANADIAN POSTS POUCH

C O N F I D E N T I A L SECTION 01 OF 02 OTTAWA 02943

E.O. 11652: GDS
TAGS: PGOV, PINT, CA
SUBJECT: FEDERAL GOVERNMENT ANNOUNCES CONSTITUTIONAL
REFORM PACKAGE JUNE 12

1. SUMMARY: FEDERAL GOVERNMENT JUNE 12 TABLED IN HOUSE OF COMMONS A WHITE PAPER OUTLINING IN GENERAL TERMS PROPOSALS FOR A NEW CONSTITUTION. SO-CALLED PHASE ONE, TO BE COMPLETED BEFORE JULY, 1979, WILL INCLUDE LEGISLATION TO BE PASSED BY FEDERAL PARLIAMENT. SPECIFIC PROPOSALS INCLUDE A BILL OF RIGHTS PROTECTING, INTER ALIA, MINORITY LANGUAGE RIGHTS; A "HOUSE OF THE FEDERATION" TO REPLACE THE SENATE WITH PROVINCIAL INPUT IN CHOICE OF MEMBERS; AND PROVINCIAL PARTICIPATION IN CHOICE OF SUPREME COURT JUSTICES. PHASE TWO WILL BE FEDERAL-PROVINCIAL CONSULTATIONS ON REVISED DIVISION OF POWERS TO BE COMPLETED BY JULY, 1981. FEDERAL PACKAGE CONTAINS NO REAL SURPRISES. END SUMMARY.

2. TRUDEAU GOVERNMENT'S LONG-AWAITED CONSTITUTIONAL REFORM PACKAGE WAS REVEALED THROUGH A JUNE 9 PRESS LEAK BEFORE GOVERNMENT JUNE 12 TABLED IN COMMONS A WHITE PAPER CONTAINING GENERAL OUTLINE OF PROPOSALS. LEAK
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APPEARED IN JUNE 9 EDITION OF LA PRESSE WHICH HAD SECURED A COPY OF SUMMARY ENTITLED "A TIME FOR ACTION."

3. FEDERAL GOVERNMENT'S PROPOSALS, WHICH REMAIN TO BE FLESHED OUT, CONSIST OF TWO MAIN ELEMENTS. TOGETHER, THESE ARE TO ACHIEVE TRUDEAU GOVERNMENT GOAL OF "A NEW CONSTITUTION FOR CANADA." FIRST ELEMENT, SO-CALLED PHASE

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ONE, INCLUDES A SERIES OF CONSTITUTIONAL REVISIONS WHICH, UNDER ARTICLE 91 OF THE BNA ACT, CAN BE PASSED BY THE FEDERAL PARLIAMENT WITHOUT THE FORMAL APPROVAL OF THE PROVINCES. ALTHOUGH LEGISLATION IS TO BE INTRODUCED BEFORE SUMMER RECESS INCORPORATING PROPOSED REVISIONS, WHITE PAPER NOTES THAT "THERE IS NO EXPECTATION THAT THESE PROPOSALS WOULD BE PASSED IN THIS SESSION OR WITHOUT CHANGE." GOAL IS PASSAGE BEFORE JULY 1, 1979. LEGISLATION WILL PROVIDE FOR A CONSTITUTIONAL BILL OF RIGHTS GUARANTEEING, INTER ALIA, LINGUISTIC ACCESS OF ENGLISH AND FRENCH MINORITIES TO LOCAL ESSENTIAL SERVICES AND EDUCATION WHERE NUMBERS WARRANT. SECOND PART OF LEGISLATION WILL CHANGE NAME OF THE SENATE TO THE "HOUSE OF THE FEDERATION" WITH ITS MEMBERS APPOINTED BY THE PROVINCES UNDER TERMS NOT YET SPELLED OUT. PROVINCES WILL ALSO BE GIVEN A ROLE, AS YET UNSPECIFIED, IN APPOINTMENT OF SUPREME COURT JUSTICES. EMBASSY COMMENT: WHETHER PRESENT PARLIAMENT WILL HAVE OPPORTUNITY TO PASS THIS LEGISLATION WILL DEPEND ON TIMING OF NEXT NATIONAL ELECTIONS. THERE IS NO PROSPECT FOR EXTENSIVE PARLIAMENTARY CONSIDERATION PRIOR TO SUMMER BREAK EXPECTED IN LATE JUNE OR EARLY JULY. IF PM TRUDEAU CALLS ELECTIONS FOR NEXT FALL, HE WILL DISSOLVE PARLIAMENT IN LATE SUMMER AND PROPOSED LEGISLATION WILL DISAPPEAR WITH THE PARLIAMENT. END EMBASSY COMMENT.

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4. SO-CALLED PHASE TWO, TO BE COMPLETED BY JULY 1, 1981, CONSISTS OF FEDERAL/PROVINCIAL NEGOTIATIONS ON REVISED DISTRIBUTION OF POWERS BETWEEN THE TWO ENTITIES. PM TRUDEAU HAD EARLIER INDICATED DESIRE TO COMMENCE THESE NEGOTIATIONS NEXT FALL. WHILE ROOM FOR NEGOTIATION IS OPEN-ENDED, FEDERAL GOVERNMENT ANTICIPATES A SWAP OF POWERS RATHER THAN A ONE-SIDED DEVOLUTION TO THE PROVINCES. SUMMARY LEAKED BY LA PRESSE NOTES FEDERAL VIEW THAT CANADIAN FEDERATION IS ALREADY HIGHLY DECENTRALIZED AND THAT MASSIVE POWER TRANSFER TO THE PROVINCES WOULD NOT SOLVE PRESENT PROBLEMS.

5. COMMENT: TRUDEAU GOVERNMENT HAD PROMISED THIS CONSTITUTIONAL PACKAGE MONTHS AGO. FALSE START ON SPRING NATIONAL ELECTIONS PROVIDED SOME EXCUSE FOR DELAY, BUT WE UNDERSTAND THAT THERE WERE ALSO DIFFERENCES WITHIN TRUDEAU GOVERNMENT ON CONTENTS OF THE PACKAGE. IN ANY CASE, WHITE PAPER CONTAINS GENERAL DESCRIPTION OF PROPOSALS RATHER THAN SPECIFICS AND HAS NO SURPRISES. REVISION OF SENATE HAS BEEN ADVOCATED FOR MONTHS BY OPPOSITION PROGRESSIVE CONSERVATIVE (PC) PARTY, ALBEIT AS A NEW "HOUSE OF THE PROVINCES" RATHER THAN A "HOUSE

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OF THE FEDERATION." GREATER PROVINCIAL INPUT IN NOMI-
NATION OF SUPREME COURT JUSTICES HAS BEEN PROPOSED BY
MANY COMMENTATORS ON NATIONAL UNITY AND WAS WIDELY
EXPECTED TO BE INCLUDED IN TRUDEAU GOVERNMENT PROPOSALS.
NEARLY ALL ELEMENTS OF THE PACKAGE, IN FACT, WERE
DISCUSSED AT THE UNSUCCESSFUL 1971 FEDERAL-PROVINCIAL
CONFERENCE IN VICTORIA.

6. THERE ARE, HOWEVER, TWO NEW ELEMENTS WHICH GIVE
APPEARANCE OF STRENGTHENED TRUDEAU GOVERNMENT RESOLVE.
FEDERAL GOVERNMENT HAS INDICATED INTENTION OF GOING

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IT ALONE WITHOUT FORMAL PROVINCIAL APPROVAL ON ELEMENTS
OF PHASE ONE: BILL OF RIGHTS; REVISED SENATE; AND
PROVINCIAL SAY IN SUPREME COURT NOMINATIONS. FURTHER,
THIS IS FIRST TIME THAT FEDERAL GOVERNMENT HAS SET
SPECIFIC TIME LIMITS FOR COMPLETION OF CONSTITUTIONAL
REFORM: JULY, 1979 FOR PHASE ONE AND JULY, 1981 FOR
PHASE TWO.

7. STRONG STRAIN OF PREDICTABILITY RUNS THROUGH THESE
NEW PROPOSALS AND INITIAL REACTION TO THEM. IN FORMER
REGARD, FEDERAL PROPOSAL FOR PHASE TWO REVISED DIVISION
OF POWERS WITH PROVINCES BEARS UNMISTAKABLE IMPRINT OF
PM TRUDEAU'S CENTRALIST VIEWS. GOVERNMENT'S SUMMARY,
FOR EXAMPLE, NOTES THAT "CANADA IS ALREADY A VERY
DECENTRALIZED FEDERATION SO THE SOLUTION WILL NOT LIE
IN A MASSIVE SHIFT OF POWERS FROM THE FEDERAL GOVERNMENT
TO THE PROVINCES. RATHER, THE GOVERNMENT ANTICIPATES
A JUDICIOUS COMBINATION OF CHANGES, WITH SOME GIVE-AND-

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TAKE BETWEEN GOVERNMENTS." THE LANGUAGE INCORPORATES OFTEN-STATED TRUDEAU VIEW THAT REVISION SHOULD REPRESENT A SWAP RATHER THAN A FEDERAL GIVEAWAY. TRUDEAU GOVERNMENT THEREFORE WILL PRESUMABLY ENTER NEGOTIATIONS WITH ITS BIASES INTACT AND ON THE TABLE.
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8. IN LATTER REGARD, REACTION FROM QUEBEC GOVERNMENT HAS BEEN ENTIRELY PREDICTABLE. RIGHT AFTER JUNE 9 LEAK, PREMIER LEVESQUE SCORNFULLY LABELED THE PACKAGE A "MOUSE STILLBORN." ANY SOFTER LEVESQUE RETORT WOULD HAVE BEEN SURPRISING. LESS PREDICTABLE BUT EQUALLY IMPORTANT ARE VIEWS OF QUEBEC LIBERAL LEADER CLAUDE RYAN WHO HAS YET TO COMMENT PUBLICLY ON PROPOSALS. A MAJOR QUESTION IS ALREADY EXTENT TO WHICH QUEBEC WILL PARTICIPATE IN FEDERAL-PROVINCIAL NEGOTIATIONS UNDER PHASE TWO.

9. IN EMBASSY VIEW, FEDERAL PROPOSALS, ALTHOUGH DEVOID OF ANYTHING REALLY NEW AND OPEN TO CHARGE OF "TOKENISM" FROM SAME QUARTERS, DO REPRESENT A NOTEWORTHY DEVELOPMENT. FEDERAL GOVERNMENT HAS NOW AT LEAST MADE ITS FIRST FORMAL MOVE TOWARDS CONSTITUTIONAL REVISION. IT HAS, MOREOVER, PROVIDED TIME LIMITS FOR ACTION AND HAS INDICATED WILLINGNESS TO PROCEED FEDERALLY WITH THE PHASE ONE PROPOSALS. MANY CANADIANS, WE EXPECT, WILL BE CONVINCED THAT THE TRUDEAU GOVERNMENT IS NOW "DOING SOMETHING" FOR NATIONAL UNITY. WHETHER THIS SOMETHING TURNS OUT TO BE NO MORE THAN A STILLBORN MOUSE REMAINS TO BE SEEN. BUT IT SHOULD GIVE THE TRUDEAU GOVERNMENT A BOOST IN ITS MORE IMMEDIATE PROBLEM OF GETTING RE-ELECTED.

10. EMBASSY POUCHING COPY OF WHITE PAPER TO EUR/CAN.
DUEMLING

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